

ASSEMBLY BILL

No. 1249

Introduced by Assembly Member Pacheco

February 21, 2003

An act to amend Section 1560 of the Evidence Code and Section 1326 of the Penal Code, relating to subpoenas.

LEGISLATIVE COUNSEL'S DIGEST

AB 1249, as introduced, Pacheco. Criminal procedure: subpoenas.

Existing law provides that when a subpoena duces tecum is served upon the custodian of records or other qualified witness of a business in a criminal action in which the business is neither a party nor the place where any cause of action is alleged to have arisen, and the subpoena requires the production of all or any part of the records of the business, it is sufficient compliance therewith if the custodian or other qualified witness, within five days after the receipt of the subpoena or within a time otherwise agreed upon, delivers a copy of all the records described in the subpoena to the clerk of the court, the judge, or to another person, as specified. Existing law further provides that, as an alternative to these procedures, the subpoenaing party may direct the witness to make the records available for inspection or copying at the witness' business address under reasonable conditions during normal business hours, as defined.

This bill would preclude use of this alternative procedure in criminal actions. It would further preclude a party or attorney or representative of a party to a criminal action from making an oral or written request that a custodian of records or other qualified witness of a business provide books, papers, documents, or records directly to the person serving the subpoena. Violation of these provisions would be

punishable as contempt. Because it would expand the scope of contempt, which is punishable as a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the
2 following:

3 (a) The privacy of the people of California in their books,
4 papers, documents, and records is a matter of statewide importance
5 and of constitutional significance.

6 (b) Some attorneys in criminal cases have been obtaining
7 records or copies of records of litigants and third parties by means
8 other than those provided in subdivision (b) of Section 1560 of the
9 Evidence Code and in Section 1326 of the Penal Code.

10 (c) In order to protect the privacy interests of citizens in their
11 books, papers, documents, and records from warrantless intrusion
12 by means of unauthorized deposition subpoenas in criminal cases,
13 and in order to insure that these records are released to the parties
14 in a criminal action only after a judge has reviewed the records and
15 determined that there is good cause for their release to the parties,
16 it is necessary to amend Section 1560 of the Evidence Code and
17 Section 1326 of the Penal Code.

18 SEC. 2. Section 1560 of the Evidence Code is amended to
19 read:

20 1560. (a) As used in this article:

21 (1) "Business" includes every kind of business described in
22 Section 1270.

23 (2) "Record" includes every kind of record maintained by a
24 business.

25 (b) Except as provided in Section 1564, when a subpoena duces
26 tecum is served upon the custodian of records or other qualified



1 witness of a business in an action in which the business is neither
2 a party nor the place where any cause of action is alleged to have
3 arisen, and the subpoena requires the production of all or any part
4 of the records of the business, it is sufficient compliance therewith
5 if the custodian or other qualified witness, within five days after
6 the receipt of the subpoena in any criminal action or within the
7 time agreed upon by the party who served the subpoena and the
8 custodian or other qualified witness, or within 15 days after the
9 receipt of the subpoena in any civil action or within the time agreed
10 upon by the party who served the subpoena and the custodian or
11 other qualified witness, delivers by mail or otherwise a true,
12 legible, and durable copy of all the records described in the
13 subpoena to the clerk of the court or to the judge if there be no clerk
14 or to another person described in subdivision (c) of Section 2026
15 of the Code of Civil Procedure, together with the affidavit
16 described in Section 1561.

17 (c) The copy of the records shall be separately enclosed in an
18 inner envelope or wrapper, sealed, with the title and number of the
19 action, name of witness, and date of subpoena clearly inscribed
20 thereon; the sealed envelope or wrapper shall then be enclosed in
21 an outer envelope or wrapper, sealed, and directed as follows:

22 (1) If the subpoena directs attendance in court, to the clerk of
23 the court, or to the judge thereof if there be no clerk.

24 (2) If the subpoena directs attendance at a deposition, to the
25 officer before whom the deposition is to be taken, at the place
26 designated in the subpoena for the taking of the deposition or at the
27 officer's place of business.

28 (3) In other cases, to the officer, body, or tribunal conducting
29 the hearing, at a like address.

30 (d) Unless the parties to the proceeding otherwise agree, or
31 unless the sealed envelope or wrapper is returned to a witness who
32 is to appear personally, the copy of the records shall remain sealed
33 and shall be opened only at the time of trial, deposition, or other
34 hearing, upon the direction of the judge, officer, body, or tribunal
35 conducting the proceeding, in the presence of all parties who have
36 appeared in person or by counsel at the trial, deposition, or hearing.
37 Records which are original documents and which are not
38 introduced in evidence or required as part of the record shall be
39 returned to the person or entity from whom received. Records
40 which are copies may be destroyed.

1 (e) As an alternative to the procedures described in
2 subdivisions (b), (c), and (d), the subpoenaing party *in a civil*
3 *action* may direct the witness to make the records available for
4 inspection or copying by the party's attorney, the attorney's
5 representative, or deposition officer as described in paragraph (3)
6 of subdivision (d) of Section 2020 of the Code of Civil Procedure,
7 at the witness' business address under reasonable conditions
8 during normal business hours. Normal business hours, as used in
9 this subdivision, means those hours that the business of the witness
10 is normally open for business to the public. When provided with
11 at least five business days' advance notice by the party's attorney,
12 attorney's representative, or deposition officer, the witness shall
13 designate a time period of not less than six continuous hours on a
14 date certain for copying of records subject to the subpoena by the
15 party's attorney, attorney's representative or deposition officer. It
16 shall be the responsibility of the attorney's representative to
17 deliver any copy of the records as directed in the subpoena.
18 Disobedience to the deposition subpoena issued pursuant to this
19 subdivision is punishable as provided in subdivision (h) of Section
20 2020 of the Code of Civil Procedure.

21 SEC. 3. Section 1326 of the Penal Code is amended to read:

22 1326. (a) The process by which the attendance of a witness
23 before a court or magistrate is required is a subpoena. It may be
24 signed and issued by any of the following:

25 (1) A magistrate before whom a complaint is laid or his *or her*
26 clerk, the district attorney or his *or her* investigator, or the public
27 defender or his *or her* investigator, for witnesses in the state.

28 (2) The district attorney, his *or her* investigator, or, upon
29 request of the grand jury, any judge of the superior court, for
30 witnesses in the state, in support of an indictment or information,
31 to appear before the court in which it is to be tried.

32 (3) The district attorney or his *or her* investigator, the public
33 defender or his *or her* investigator, the clerk of the court in which
34 a criminal action is to be tried, or, if there is no clerk, the judge of
35 the court. The clerk or judge shall, at any time, upon application
36 of the defendant, and without charge, issue as many blank
37 subpoenas, subscribed by him *or her*, for witnesses in the state, as
38 the defendant may require.

39 (4) The attorney of record for the defendant.

1 ***(b) A subpoena issued in a criminal action that commands the***
2 *custodian of records or other qualified witness of a business to*
3 *produce books, papers, documents, or records shall direct that*
4 *those items be delivered by the custodian or qualified witness in the*
5 *manner specified in subdivision (b) of Section 1560 of the*
6 *Evidence Code. Subdivision (e) of Section 1560 of the Evidence*
7 *Code shall not apply to criminal cases.*

8 ***(c) In a criminal action, no party, or attorney or representative***
9 *of a party, may issue a subpoena commanding the custodian of*
10 *records or other qualified witness of a business to provide books,*
11 *papers, documents, or records, or copies thereof, relating to a*
12 *person or entity other than the subpoenaed person or entity in any*
13 *manner other than that specified in subdivision (b) of Section 1560*
14 *of the Evidence Code. In a criminal action, no party, or attorney*
15 *or representative of a party, may make an oral or written request*
16 *that a custodian of records or other qualified witness of a business*
17 *provide books, papers, documents, or records, or copies thereof,*
18 *directly to the party, attorney, or representative serving the*
19 *subpoena.*

20 ***(d) A violation of subdivision (b) or (c) may be punished by the***
21 *court as a contempt pursuant to paragraph (4) of subdivision (a)*
22 *of Section 1209 of the Code of Civil Procedure.*

23 ***(e) This section shall not be construed to prohibit obtaining***
24 *books, papers, documents, or records with the consent of the*
25 *person to whom the books, papers, documents, or records relate.*

26 **SEC. 4.** No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.